

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 134/2013

Ram Dulari Devi & ors.

Vrs.

Nirmala Tiwari

ORDER

30.03.2016- The instant appeal petition is directed against the impugned order passed by DCLR, Chapra Sadar in case No. 203/2011 (Janta Darbar) on 11.03.2013.

The brief facts of the case are that one Nirmala Tiwari W/o J.K. Tiwari R/o Mohalla-Husse Chapra, P.S. Chapra Town, Dist-Saran filed a petition for removal of Chajja and water pipe from common rasta in Mohalla Husse Chapra in the Janta Darbar of D.M. Saran. The said petition was transferred to the DCLR, Chapra Sadar for doing the needful and thereafter, a proceeding under the BLDR Act was initiated vide case No. 203/20011. In the said case it was stated that the respondent (before DCLR) original appellant in the present appeal Raj Narain Rai (Now deceased) had acquired common rasta and made boundary in the said land and also encroached the said land by extending Chajja and water pipe of his house thereby also disturbed the smooth access to the road and created nuisance so the said encroachment be removed. Thereafter, the learned DCLR issued notice to the o.ps and after hearing the parties finally vide order dt. 11.03.2013 holding that there is 10 feet wide public road which has been encroached or not is not clear as such the same needs to be measured by Anchal Amin and accordingly he directed the concerned C.O. to remove encroachment, if found on the said road after measurement. Feeling aggrieved by the said order an appeal was preferred by Raj Narain Rai (o.p. before DCLR) before this Court. But during the pendency of the appeal the original appellant died and thereafter his legal representatives have been substituted in his place as appellants.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants assailed the impugned order and termed the same to be erroneous and liable to be set aside as the said order has been passed against law and facts of the case. He further submitted that the respondent had filed a petition for the appointment of survey knowing Commissioner to enquire about the common road and measure the said land, if any encroachment is found thereupon the same may be removed. But the learned DCLR instead of ordering for appointment of any survey knowing Commissioner passed the final order. He also submitted that the learned lower Court did not appreciate the objection filed by the appellant and passed order holding that 10 feet wide common road exists on the spot but the fact is that no common road exists on the disputed

plot. He further argued that the whole approach of the learned lower Court was confused and as such the impugned order, which has been passed without considering the relevant facts, can not be proper and justified so the same is fit to be set aside.

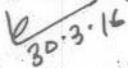
The learned counsel appearing on behalf of the respondent at the very outset of his argument questioned the maintainability of this appeal petition itself on the ground that the provisions of BLDR Act-2009 are not applicable to the facts of this case. He further submitted that the facts of this case relate to encroachment and the learned DCLR directed C.O. Chapra Sadar to ascertain the so called road and encroachment, if any, over that, as such for redressal of such kind of dispute the appellant should have adopted different forum and not the BLDR Act. He further argued that both parties, appellants and respondents are purchaser of the part land and common rasta was created for movement of all purchasers but the appellants have encroached the rasta by constructing Chajja of his house over the part of the rasta. He further submitted that it has been rightly ordered by the DCLR for the ascertaining of the rasta and if any encroachment found thereupon to be removed as such the said order is fully correct. He lastly submitted that as the impugned order is legal and valid order, the same is fit to be upheld and the instant appeal petition is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that the dispute between the parties relates to alleged encroachment over the common rasta and removal of the same. It is seen that the respondent initially approached the Janta Darbar of D.M. Saran by filing a petition for removal of alleged encroachment over the said rasta but the said petition was transferred to the learned DCLR who in turn initiated a proceeding under the BLDR Act and after hearing the parties finally ordered for the removal of encroachment, if any, from the said Rasta after its measurement. Obviously it is a dispute purely over a raiyati land and essentially the same is for removal of encroachment which can not be dealt with under the provisions of BLDR Act.

It is well established that the subject matter of adjudication under the BLDR Act does not include such matters and clearly enough the instant matter does not fall under any of six enactments mentioned in schedule-1 of the BLDR Act-2009.

For the aforementioned reasons, the impugned order is not sustainable and hence the same is set aside. Accordingly this appeal petition is disposed of.

Dictated and Corrected by me.


30.3.16
Commissioner,
Saran Division, Chapra


30-3-16
Commissioner,
Saran Division, Chapra